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SENATE, No. 1304

STATE OF NEW JERSEY

215th LEGISLATURE

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SYNOPSIS

Prohibits State and local public contracts with persons or entities engaging in certain investment activities in energy or finance sectors of Iran.

CURRENT VERSION OF TEXT

As reported by the Senate State Government, Wagering, Tourism & Historic Preservation Committee on June 4, 2012, with amendments.

(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning public contracts and supplementing various
2 parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. The Legislature finds and declares that:

8 a. In imposing sanctions on Iran, the United States Congress
9 and the President of the United States have determined that the
10 illicit nuclear activities of Iran, combined with its development of
11 unconventional weapons and ballistic missiles, and its support of
12 international terrorism, represent a serious threat to the security of
13 the United States and its allies around the world.

14 b. The International Atomic Energy Agency has repeatedly
15 called attention to Iran's unlawful nuclear activities, and as a result,
16 the United Nations Security Council has adopted four rounds of
17 sanctions designed to compel the Government of Iran to cease those
18 activities and comply with its obligations under the Treaty on the
19 Non-Proliferation of Nuclear Weapons, commonly known as the
20 Nuclear Non-Proliferation Treaty.

21 c. The human rights situation in Iran has steadily deteriorated
22 since the fraudulent elections of 2009, as evidenced by the brutal
23 repression, torture, murder and arbitrary detention of peaceful
24 protestors, dissidents and minorities.

25 d. On July 1, 2010, President Obama signed into law the
26 Comprehensive Iran Sanctions, Accountability, and Investment Act
27 of 2010, which expressly authorizes states and local governments to
28 prevent investment in, including prohibiting entry into or renewing
29 contracts with, companies operating in Iran and includes provisions
30 that preclude companies that do business in Iran from contracting
31 with the U.S. Government.

32 e. It is the intention of the Legislature to implement this
33 authority granted under Section 202 of the Comprehensive Iran
34 Sanctions, Accountability, and Divestment Act of 2010.

35 f. There are moral and reputational reasons for state and local
36 governments to not engage in business with foreign companies that
37 have business activities benefiting foreign states, such as Iran, that
38 pursue illegal nuclear programs, support acts of terrorism and
39 commit violations of human rights.

40 g. Short-term economic profits cannot be a justification to
41 circumvent even in spirit those international sanctions designed to
42 thwart Iran from developing nuclear weapons.

43 h. The concerns of this Legislature regarding Iran are strictly
44 the result of the actions of the government of Iran and should not be
45 construed as enmity toward the Iranian people.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SSG committee amendments adopted June 4, 2012.

1 2. As used in this act:

2 a. “State agency” means any of the principal departments in the
3 Executive Branch of the State government, and any division, board,
4 bureau, office, commission or other instrumentality within or
5 created by such department, the Legislature of the State and any
6 office, board, bureau or commission within or created by the
7 Legislative Branch, and any independent State authority,
8 commission, instrumentality or agency which is authorized by law
9 to award public contracts.

10 b. “Energy sector” of Iran means activities to develop, invest
11 in, explore for, refine, transfer, purchase or sell petroleum, gasoline,
12 or other refined petroleum products, or natural gas, liquefied natural
13 gas resources or nuclear power in Iran.

14 c. “Financial institution” means the term as used in Section 14
15 of the Iran Sanctions Act of 1996, Section 14 of Pub.L.104-172 (50
16 U.S.C. 1701 note).

17 d. ¹“Construction sector” of Iran means activities to plan,
18 design, engineer, build, construct or finance projects and
19 investments related to development of Iranian infrastructure,
20 including infrastructure related to Iran’s oil and gas or nuclear
21 power industry.

22 e.]¹ “Iran” means the government of Iran, and includes the
23 territory of Iran and any other territory or marine area, including the
24 exclusive economic zone and continental shelf, over which the
25 government of Iran claims sovereignty, sovereign rights, or
26 jurisdiction, provided that the government of Iran exercises partial
27 or total control over the area or derives a benefit from economic
28 activity in the area pursuant to international arrangements.

29 ¹[f.] e.¹ “Person or entity” means any of the following:

30 (1) A natural person, corporation, company, limited partnership,
31 limited liability partnership, limited liability company, business
32 association, sole proprietorship, joint venture, partnership, society,
33 trust, or any other nongovernmental entity, organization, or group.

34 (2) Any governmental entity or instrumentality of a government,
35 including a multilateral development institution, as defined in
36 Section 1701(c)(3) of the International Financial Institutions Act,
37 22 U.S.C. 262r(c)(3).

38 (3) Any parent, successor, subunit, direct or indirect subsidiary,
39 or any entity under common ownership or control with, any entity
40 described in paragraphs (1) or (2).

41 ¹[g.] f.¹ For the purposes of this act, a person engages in
42 investment activities in Iran ¹₂ if ¹[any of the following is true.
43 The person or entity]¹ :

44 ¹[(1) Provides goods or services in or to the energy, financial or
45 construction sectors of Iran.

1 (2) Provides oil or liquefied natural gas tankers, or products
2 used to construct or maintain pipelines used to transport oil or
3 liquefied natural gas for the energy sector of Iran.

4 (3) Purchases crude oil, refined petroleum products or natural
5 gas from Iran.

6 (4) Provides goods or services, or payment for goods or
7 services, to a person or entity on the Specially Designated Nationals
8 List (SDN) of the U.S. Office of Foreign Assets Control (OFAC)
9 for Iran or to a non-country specific person or entity placed on the
10 SDN for violation of OFAC Iran sanctions.

11 (5) Transfers, or facilitates the transfer of, goods or technologies
12 to Iran, or provides services to Iran including through joint ventures
13 or licensing of any intellectual property with respect to goods or
14 technologies described below:

15 (a) firearms or ammunition as those terms are defined in 18
16 U.S.C. § 921, accessories for firearms, rubber bullets, clubs, batons,
17 police sticks, mace, stun grenades, tasers or other electroshock
18 weapons, tear gas, water cannons, motorcycles, motorized transport
19 for security personnel or surveillance technology;

20 (b) sensitive technology as defined in section 106(c) of the
21 Comprehensive Iran Sanctions, Accountability, and Divestment Act
22 of 2010, 22 U.S.C. 8515(c); and

23 (c) other goods or technologies that the State agency determines
24 may have or may be used by Iran to commit human rights abuses
25 against the people of Iran whether or not such goods or technologies
26 are sold directly to Iran or otherwise.

27 (6) Is a financial, insurance or other institution that extends
28 credit to a person or entity that engages in investment activities
29 described in this section and is identified on a list created pursuant
30 to subsection b. of section 3 as a person or entity engaging in
31 investment activities in Iran.]

32 the person provides goods or services of \$20,000,000 or more in
33 the energy sector of Iran, including a person that provides oil or
34 liquefied natural gas tankers, or products used to construct or
35 maintain pipelines used to transport oil or liquefied natural gas, for
36 the energy sector of Iran; or

37 the person is a financial institution that extends \$20,000,000 or
38 more in credit to another person, for 45 days or more, if that person
39 will use the credit to provide goods or services in the energy sector
40 in Iran and is identified on a list created pursuant to subsection b. of
41 section 3 of this act as a person engaging in investment activities in
42 Iran as described in subsection a. of section 3 of this act.

43 The State Treasurer shall adopt regulations that reduce the
44 amounts provided for in this subsection if the State Treasurer
45 determines that such change is permitted or required under Section
46 202 of the Comprehensive Iran Sanctions, Accountability, and
47 Divestment Act of 2010.¹

1 3. a. A person or entity that, at the time of bid or proposal for a
2 new contract or renewal of an existing contract, is identified on a
3 list created pursuant to subsection b. of this section as a person or
4 entity engaging in investment activities in Iran as described in
5 subsection '[g.] f.' of section 2 of this act, shall be ineligible to,
6 and shall not, bid on, submit a proposal for, or enter into or renew, a
7 contract with a State agency for goods or services.

8 b. Within '[30] 90' days of the effective date of this act, the
9 Department of Treasury shall, using credible information available
10 to the public, develop a list of persons or entities it determines
11 engage in investment activities in Iran as described in subsection
12 '[g.] f.' of section 2.

13 c. The department shall update the list every '[90] 180' days.

14 d. Before finalizing an initial list pursuant to subsection b. of
15 this section or an updated list pursuant to subsection c. of this
16 section, the department shall do the following before a person or
17 entity is included on the list:

18 (1) Provide '[30] 90' days written notice of its intent to include
19 the person or entity on the list. The notice shall inform the person
20 or entity that inclusion on the list would make the person or entity
21 ineligible to bid on, submit a proposal for, or enter into or renew, a
22 contract for goods or services with a State agency; and

23 (2) Provide a person or entity with an opportunity to comment in
24 writing that it is not engaged in investment activities in Iran. If the
25 person or entity demonstrates to the department that the person or
26 entity is not engaged in investment activities in Iran as described in
27 subsection '[g.] f.' of section 2 of this act, the person or entity
28 shall not be included on the list, unless the person or entity is
29 otherwise ineligible to bid on a contract as described in paragraph
30 (3) of subsection a. of section 5 of this act.

31 (3) The department shall make every effort to avoid erroneously
32 including a person or entity on the list.

33
34 4. a. A State agency shall require a person or entity that
35 submits a bid or proposal or otherwise proposes to enter into or
36 renew a contract to certify, at the time the bid is submitted or the
37 contract is renewed, that the person or entity is not identified on a
38 list created pursuant to subsection b. of section 3 of this act as a
39 person or entity engaging in investment activities in Iran described
40 in subsection '[g.] f.' of section 2 of this act.

41 b. The certification required shall be executed on behalf of the
42 applicable person or entity by an authorized officer or
43 representative of the person or entity.

44 c. In the event that a person or entity is unable to make the
45 certification required because it or one of its parents, subsidiaries,
46 or affiliates as defined in subdivision '[f.] e.' of section 2 of this
47 act has engaged in one or more of the activities specified in

1 subsection 'g.] f.' of section 2 of this act, the person or entity
2 shall provide to the State agency concerned, prior to the deadline
3 for delivery of such certification, a detailed and precise description
4 of such activities, such description to be provided under penalty of
5 perjury.

6 d. The certifications provided under subsection a. of this
7 section and disclosures provided under subsection c. of this section
8 shall be disclosed to the public.

9
10 5. a. If the department determines, using credible information
11 available to the public and after providing '[30] 90' days written
12 notice and an opportunity to comment in writing for the person or
13 entity to demonstrate that it is not engaged in investment activities
14 in Iran, that the person or entity has submitted a false certification
15 pursuant to section 4 of this act, and the person or entity fails to
16 demonstrate to the department that the person or entity has ceased
17 its engagement in the investment activities in Iran within '[30] 90'
18 days after the determination of a false certification, the following
19 shall apply:

20 (1) Pursuant to an action under subsection b. of this section, a
21 civil penalty in an amount that is equal to the greater of \$1,000,000
22 or twice the amount of the contract for which the false certification
23 was made.

24 (2) Termination of an existing contract with the State agency as
25 deemed appropriate by the State agency.

26 (3) Ineligibility to bid on a contract for a period of three years
27 from the date of the determination that the person or entity
28 submitted the false certification.

29 b. The department shall report to the 'New Jersey' Attorney
30 General the name of the person or entity that the State agency
31 determines has submitted a false certification under section 4 of this
32 act, together with its information as to the false certification, and
33 the Attorney General shall determine whether to bring a civil action
34 against the person or entity to collect the penalty described in
35 paragraph (1) of subsection a. of this section.

36 Only one civil action against the person or entity to collect the
37 penalty described in paragraph (1) of subsection a. of this section
38 may be brought for a false certification on a contract. A civil action
39 to collect such penalty shall commence within three years from the
40 date the certification is made.

41
42 6. The Governor shall submit to the Attorney General of the
43 United States a written notice describing this act within 30 days
44 after its effective date.

45
46 7. a. A local contracting unit as defined in and subject to the
47 provisions of the "Local Public Contracts Law," P.L.1971, c.198
48 (C.40A:11-1 et seq.), shall implement and comply with the

1 provisions of P.L. , c. (C.)(pending before the Legislature as
2 this bill), except that the contracting unit shall rely on the list
3 developed by the State Department of the Treasury pursuant to
4 section 3 of P.L. , c. (C.)(pending before the Legislature as
5 this bill).

6 b. If the local contracting unit determines that a person or
7 entity has submitted a false certification concerning its engagement
8 in investment activities in Iran pursuant to section 4 of
9 P.L. , c. (C.)(pending before the Legislature as this bill), the
10 local contracting unit shall report to the 'New Jersey' Attorney
11 General the name of that person or entity, and the Attorney General
12 shall determine whether to bring a civil action against the person to
13 collect the penalty prescribed in paragraph (1) of subsection a. of
14 section 5 of P.L. , c. (C.)(pending before the Legislature as this
15 bill). The local contracting unit may also report to the municipal
16 attorney or county counsel, as appropriate, the name of that person,
17 together with its information as to the false certification, and the
18 municipal attorney or county counsel, as appropriate, may
19 determine to bring such civil action against the person to collect
20 such penalty.

21
22 8. a. A board of education as defined in and subject to the
23 provisions of the "Public School Contracts Law," P.L.1977, c.114
24 (N.J.S.18A:18A-1 et seq.), shall implement and comply with the
25 provisions of P.L. , c. (C.)(pending before the Legislature as
26 this bill), except that the board shall rely on the list developed by
27 the State Department of the Treasury pursuant to section 3 of
28 P.L. , c. (C.)(pending before the Legislature as this bill).

29 b. If the board determines that a person or entity has submitted
30 a false certification concerning its engagement in investment
31 activities in Iran under section 4 of P.L. , c. (C.)(pending
32 before the Legislature as this bill), the board shall report to the
33 'New Jersey' Attorney General the name of that person or entity,
34 and the Attorney General shall determine whether to bring a civil
35 action against the person to collect the penalty prescribed in
36 paragraph (1) of subsection a. of section 5 of
37 P.L. , c. (C.)(pending before the Legislature as this bill).

38 The board may also report to the board's attorney the name of
39 that person, together with its information as to the false
40 certification, and the board's attorney may determine to bring such
41 civil action against the person to collect such penalty.

42
43 9. a. A county college as defined in and subject to the
44 provisions of the "County College Contracts Law," P.L.1982, c.189
45 (C.18A:64A-25.1 et seq.), shall implement and comply with the
46 provisions of P.L. , c. (C.)(pending before the Legislature as
47 this bill), except that the county college shall rely on the list
48 developed by the State Department of the Treasury pursuant to

1 section 3 of P.L. , c. (C.)(pending before the Legislature as
2 this bill).

3 b. If the county college determines that a person or entity has
4 submitted a false certification concerning its engagement in
5 investment activities in Iran pursuant to section 4 of
6 P.L. , c. (C.)(pending before the Legislature as this bill), the
7 county college shall report to the 'New Jersey' Attorney General
8 the name of that person, and the Attorney General shall determine
9 whether to bring a civil action against the person or entity to collect
10 the penalty prescribed in paragraph (1) of subsection a. of section 5
11 of P.L. , c. (C.)(pending before the Legislature as this bill).

12 The county college may also report to the county college
13 attorney the name of that person, together with its information as to
14 the false certification, and the county college attorney may
15 determine to bring such civil action against the person to collect
16 such penalty.

17

18 10. This act shall take effect immediately but shall apply to
19 contracts awarded or renewed commencing 30 days after the
20 effective date of this act.